

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION**

JOSEPH RICHARD

**MISC. ACTION 09-0022
CIVIL ACTION 09-1288**

VS.

DISTRICT JUDGE DOHERTY

**BIS SALAMIS, INC.,
SIGNAL MUTUAL INDEMNITY
ASSOCIATION, LTD.**

MAGISTRATE JUDGE METHVIN

***ORDER CERTIFYING FACTS TO DISTRICT JUDGE
PURSUANT TO 28 U.S.C. § 636(e)(6)(B) FOR HEARING
ON CONTEMPT***

The undersigned magistrate judge hereby certifies the following facts to the district judge and requests that a hearing be held, requiring Dr. Nancy Lynn Rogers to appear and show cause why she should not be adjudged in civil contempt of court.

Background

On June 5, 2009, BIS Salamis, Inc., and Signal Mutual Indemnity Association, Ltd. (“Movers”) filed the instant motion to compel pursuant to Fed. R. Civ. P. Rule 45. The motion was filed as a Miscellaneous Action in this court, as the underlying litigation is a worker’s compensation suit filed by claimant Joseph Richard which is pending before the U. S. Department of Labor.¹ BIS Salamis, Inc., is claimant’s employer, and Signal Mutual Indemnity Assn., Ltd., is the worker’s compensation carrier.

Movers seek to obtain copies of medical records related to Dr. Rogers’ examination of claimant Richard, done at Movers’ request. The attachments to the motion show that movers personally served Dr. Rogers with a subpoena signed by a DOL administrative law judge on

¹ Case No. 2009-LHC-00018, OWCP No. 182663, U. S. Department of Labor, Office of Administrative Law Judges.

March 5, 2009. The motion also alleges that Dr. Rogers did not respond to the subpoena, and trial in the worker's compensation matter is set for August 25, 2009.

Considering the motion, the undersigned magistrate judge set the motion to compel for a show cause hearing on July 31, 2009 at 9:30 a.m. Dr. Rogers was notified of via regular and certified mail. A certified mail receipt was returned and is docketed in the record, showing receipt of notice of the hearing.

Show Cause Hearing July 31, 2009

Dr. Rogers did not appear at the hearing, nor did she produce the subpoenaed medical records in lieu thereof. The 9:30 a.m. hearing was delayed until approximately 10:20 a.m. in an effort to give Dr. Rogers a chance to appear. At the show cause hearing, Alan Meche was orally granted permission to enroll as additional counsel for movers. Mr. Meche related the following history to the court.

Coastal Risk Services manages worker compensation claims for BIS Salamis. Coastal Risk requested Dr. Rogers to perform an evaluation of Richard. The evaluation was performed, and Dr. Rogers sent a bill for approximately \$300.00 for her services. Coastal Risk advised Dr. Rogers that they needed a W-9 form with a tax identification number prior to payment. Dr. Rogers has refused to supply the requested W-9 form, and therefore Coastal Risk has not paid her bill. Coastal Risk has accepted responsibility for payment, but needs the W-9 to release the funds, which Dr. Rogers refuses to provide.

As discussed above, Movers attempted to obtain Dr. Rogers' records by serving her with a subpoena signed by an administrative law judge. Mr. Corey James Hebert testified at the show cause hearing regarding his personal service of the subpoena on Dr. Rogers. He related he

entered the door of her office, which is also her residence, called out, and she appeared from a back room and accepted service of the subpoena.

Mr. Meche related that yesterday, on July 30, 2009, his paralegal contacted Dr. Rogers via telephone, and Dr. Rogers confirmed that she did have Mr. Richard's medical records, but she would not release them due to non-payment. Dr. Rogers terminated the conversation before any discussion could ensue.

This morning, prior to the show cause hearing, L'Reece David, the undersigned's law clerk, telephoned Dr. Rogers via telephone to remind her of the hearing. Dr. Rogers, after identifying herself, informed Ms. David that she was not going to appear for the show cause hearing. Dr. Rogers terminated the conversation.²

Recommendation

Based upon the foregoing, the undersigned concludes that Dr. Rogers' failure to comply with the lawful subpoena, to produce the documents in question, and to appear at today's show cause hearing, were deliberate, knowing, and not the result of mistake or ignorance.

Therefore,

IT IS ORDERED that these facts be certified to the district judge pursuant to 28 U.S.C. § 636(e)(6)(B)(iii) for a show cause hearing why Dr. Lynn Rogers should not be adjudged in civil contempt of court by reason of the facts certified herein;

IT IS FURTHER ORDERED that Dr. Lynn Rogers appear and show cause on **Tuesday, the 4th day of August, 2009, at 2:30 p.m., before U. S. District Judge Rebecca**

² The court notes that Dr. Rogers has a civil rights action pending in this court, CA 05-cv-0186, Nancy Lynn Rogers v. Lafayette City-Parish Consolidated Government, and has counsel enrolled in that matter on her behalf. The case, assigned to Judge Tucker L. Melançon, has been administratively closed since 2007.

Doherty, Courtroom 2, Judge John M. Shaw Federal Building and Courthouse, 800 Lafayette Street, Lafayette, Louisiana, why she should not be held in civil contempt of court by reason of the facts certified, until she produces the records in question.

IT IS FURTHER ORDERED that the Clerk of Court issue a summons for Dr. Nancy Lynn Rogers, requiring her appearance at the show cause hearing on August 4, 2009 at 2:30 p.m before Judge Doherty.

IT IS FURTHER ORDERED that the U.S. Marshal shall serve the summons and a copy of this Order on **Dr. Nancy Lynn Rogers, 798 E. Farrel Road, Lafayette, Louisiana 70508.**

Signed at Lafayette, Louisiana, on July 31, 2009.

A handwritten signature in black ink, appearing to read 'M. Methvin', is written over a horizontal line.

Mildred E. Methvin
United States Magistrate Judge
800 Lafayette St., Suite 3500
Lafayette, Louisiana 70501
(337) 593-5140 (phone) 593-5155 (fax)